Supreme Court, U.S.
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No. 06-963

In The
Supreme Court of the United States

CHRISTOPHER D. VAUGHAN,

Petitioner,

v.

DEBORAH CONNER, ANTONIO ELZO, and GIUSEPPE A. WELLER,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of The State Of Florida, Fourth District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a government official is entitled to qualified immunity when he conducts a warrantless administrative search of residential property in September 2000, claiming reliance on a statute which grants the official the "power to enter into or upon any place" to conduct agricultural inspections.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER D. VAUGHAN respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the District Court of Appeal of the State of Florida, Fourth District, rendered and entered in case numbers 4D04-1109 and 4D04-2136 in that court which affirmed the judgment of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

OPINION BELOW

A copy of the decision of the District Court of Appeal of the State of Florida, Fourth District, affirming the granting of qualified immunity to the respondents and the dismissal of the claims filed pursuant to 42 U.S.C. § 1983 is contained in Appendix A.

The judgment sought to be reviewed is the judgment of the District Court of Appeal of the State of Florida, Fourth District, issued December 21, 2005, rehearing denied, March 10, 2006, reported at 920 So.2d 650, reproduced as Appendices A and B, respectively. The Florida Supreme Court entered its order denying discretionary review on August 17, 2006, reported at 939 So.2d 96, reproduced at Appendix C. On November 7, 2006, Circuit Justice Clarence Thomas granted a 60 day extension to and including January 14, 2006, to file the petition for writ of certiorari This petition is timely filed pursuant to SUP. CT. R. 13.1 and 13.5.

While the state appellate court did not dismiss the entire case brought by Petitioner, leaving intact the remainder of the suit on state tort claims against the employers of the respondents (the Florida Department of Agriculture and the Sheriff of Broward County, Florida), App. A-3, the federal claims were finally decided by the dismissal of the federal civil rights counts and the affirmance of the dismissals on appeal. App. A-1, 5. Consequently, this is a case where "if [Petitioner] were to lose on the merits, . . . the governing state law would not permit him again to present his federal claims for review." *Cox Broadcasting Corporation v. Cohn,* 420 U.S. 469, 481-82 (1975). In that circumstance, this Court has determined the issue is ripe for review. *Id.*

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES, Rule 10(c), for the reason that the District Court of Appeal of the State of Florida, Fourth District, has decided an important federal question in a way that conflicts with relevant decisions of this Court with regard to the existence of qualified immunity of state officials in a suit involving allegations of violations of 42 U.S.C. § 1983 when those officials were conducting administrative searches of a residence.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States of America provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Section 581.031, Florida Statutes,

> The department [Department of Agriculture and Consumer Services] has the following powers and duties: . . . (15)(a) To inspect plants, plant products, or other things and substances that may be capable of disseminating or carrying plant pests, noxious weeds, or arthropods, and for this purpose shall have power to enter into or upon any place and to open any bundle, package, or other container containing, or thought to contain, such material, and to take possession of such material if determined by the department to pose a threat

to the agricultural or public interests of this state.

STATEMENT OF THE CASE

On September 12, 2000, Respondents Antonio Elzo and Deborah Conner, employees of the Florida Department of Agriculture and Consumer Services *qua* inspectors, went to the residence of the Petitioner to remove citrus trees.[1] App. A-1; D, ¶¶ 13-16. When Petitioner refused their entry onto his property, they contacted the Broward County, Florida Sheriff's Office requesting a deputy be dispatched to assist them. App A-2; D, ¶¶ 23-24. Respondent Deputy Sheriff Giuseppe Weller responded. App. A-2; D, ¶ 26. Respondent Weller arrested Petitioner which allowed Respondents Elzo and Conner to enter on to Petitioner's property without consent where they turned the citrus trees into mulch. App. A-2; D, ¶¶ 33-36.

After, the prosecutor dismissed the charges against Petitioner, he filed a civil action which included counts of violating his Fourth Amendment rights pursuant to 42 U.S.C. § 1983. App. A-2; D, ¶¶ 42, 43-53, 54-60, 61-67. In ruling on a motion to dismiss where respondents argued they were entitled to qualified immunity, the trial court determined that each of the individual respondents were entitled to qualified immunity because they were acting under color of authority, and that § 581.031(15)(a), Florida

[1] Under Florida law, when a court is ruling on a motion to dismiss, all material factual allegations of the complaint must be taken as true. *Connolly v. Sebeco, Inc.*, 89 So.2d 482, 483 (Fla. 1956).

Statutes,[2] appeared to grant them the authority to enter the property and destroy the trees. App. A-2. Consequently, the trial court dismissed the civil rights counts against the respondents Elzo, Conner, and Weller. App. A-1.

On appeal, the District Court of Appeal, Fourth District, of the State of Florida in a 2 to 1 decision affirmed the ruling of the trial court holding that the three individual respondents were entitled to qualified immunity because reasonable public officials in the same circumstances, at that point in time, could have believed the statute authorized their entry onto the private property of the petitioner without authorization and that clearly established law did not prohibit their warrantless administrative search. App. A. The Florida Supreme Court subsequently declined to grant discretionary review of that decision. App. C.

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[2] Section 583.031(15)(a) provides:

The department has the following powers and duties:

To inspect plants, plant products, or other things and substances that may be capable of disseminating or carrying plant pests, noxious weeds, or arthropods, and for this purpose shall have power to enter into or upon any place and to open any bundle, package, or other container containing, or thought to contain, such material, and to take possession of such material if determined by the department to pose a threat to the agricultural or public interests of this state.

ARGUMENT[3]

CLEARLY ESTABLISHED LAW REQUIRES THAT QUALIFIED IMMUNITY BE DENIED TO A GOVERNMENT OFFICIAL FOR CONDUCTING A WARRANTLESS ADMINISTRATIVE SEARCH OF RESIDENTIAL PROPERTY IN SEPTEMBER, 2000, WHERE THE OFFICIAL CLAIMED RELIANCE ON A STATUTE WHICH GRANTS THE OFFICIAL THE "POWER TO ENTER INTO OR UPON ANY PLACE" TO CONDUCT AGRICULTURAL INSPECTIONS.

"Qualified or 'good faith' immunity is an affirmative defense that must be pleaded by the defendant [government] official." *Harlow v. Fitzgerald,* 457 U.S. 800, 815 (1982). The Court has acknowledged that the "good faith" defense for a public official charged with a violation of 42 U.S.C. § 1983 has both an objective and subjective element. *Id.* However, because of the difficulty encountered by the lower courts in determining on summary judgment, matters pertaining to the subjective good faith of defendant government officials, the Supreme Court in *Harlow* established an objective test for the qualified, good faith immunity defense in § 1983 actions. The Court stated "[w]e [] hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known." 457 U.S. at 818. The determination of whether a government

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[3] Petitioner acknowledges that most of his argument was generated by the dissenting opinion of Judge Gary Farmer.

official is entitled to qualified immunity generally turns on the objective reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Harlow v. Fitzgerald*, 457 U.S. at 819.

In holding that state officials reading § 583.031(15)(a), Florida Statutes, might reasonably have entertained good faith doubts about the applicability of this Court's holdings requiring state administrative agents to have properly issued search warrants in order to enter private residences and make public health and safety inspections, the Florida District Court of Appeal for the Fourth District brushed aside two of this Court's precedents, *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523 (1967), and *See v. City of Seattle,* 387 U.S. 541 (1967), as though the Florida Legislature were free to overrule the considered decisions of this Court. It is self evident that lower courts must adhere to this Court's precedents and cannot ignore them. *See Hubbard v. United States*, 514 U.S. 695, 713 n. 13 (1995).

The cases of *Camara* and *See* fixed the rule that the Fourth Amendment requires state and local agencies to have search warrants to make non-criminal, regulatory inspections of a person's home and property. In fact, these cases specifically rejected the very rationale stated by the lower court for its holding that qualified immunity existed. *Camara* and *See* explicitly decided that general statutory grants of authority to state agencies to enter private homes for health and safety regulatory inspections, as here, cannot be used to justify warrantless entry.

The lower court summarily waved *Camara* aside, apparently crediting the inspectors's assertion of doubts

caused by § 581.031, Florida Statutes, over the clarity of *Camara's* broad general holding about non-criminal, administrative inspections of private property. *Camara* opened with the following explanation of what the Court had decided to review:

> In *Frank v. State of Maryland,* 359 U.S. 360 [1959], this Court upheld, by a five-to-four vote, a state court conviction of a homeowner who refused to permit a municipal health inspector to enter and inspect his premises without a search warrant. In *Ohio ex rel. Eaton v. Price,* 364 U.S. 263 [1960], a similar conviction was affirmed by an equally divided Court. Since those closely divided decisions, more intensive efforts at all levels of government to contain and eliminate urban blight have led to increasing use of such inspection techniques, while numerous decisions of this Court have more fully defined the Fourth Amendment's effect on state and municipal action. In view of the growing nationwide importance of the problem, we noted probable jurisdiction in this case and in *See v. City of Seattle,* 387 U.S. 541, to re-examine whether administrative inspection programs, as presently authorized and conducted, violate Fourth Amendment rights as those rights are enforced against the States through the Fourteenth Amendment.

387 U.S. at 525. It is important to recognize that this Court was addressing not simply the San Francisco health inspection at issue in that case but, as the Court said, "whether administrative inspection programs, as presently authorized and conducted, violate Fourth Amendment rights." *Id.*

At issue in *Camara* was a health and safety inspection of a private residential apartment unit by a city inspector. In finding that a warrantless entry of an *administrative inspector* was a violation of settled Fourth Amendment law, the Court explained:

> The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The Fourth Amendment thus gives concrete expression to a right of the people which 'is basic to a free society.'

387 U.S. at 528. The Court emphasized that:

> one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.

387 U.S. at 528-29.

Camara also specifically rejected any notion that warrantless administrative searches of the kind involved in this case are tolerable because the kind of intrusion they represent is less important than criminal searches:

> We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. . . . But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth

> Amendment only when the individual is suspected of criminal behavior.

387 U.S. at 530. In describing the use of administrative inspections by governmental authorities, the Court noted:

> Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. . . . [E]ven if the occupant possesses sufficient fortitude to . . . risk [refusing entry] . . . he may never learn any more about the reason for the inspection than *that the law generally allows housing inspectors to gain entry.* The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. *This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search.* We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty.

387 U.S. at 532-33. The italicized words are critical to the claim of immunity in this case. They make clear that laws generally granting state inspectors the authority to enter any place, including homes, cannot be understood as a dispensation from the warrant requirement. To do so would grant inspectors in the field discretion to invade

private property, and the Court has "consistently circumscribed" such grants of discretion. In other words the very justification for constitutional doubts relied on by the majority was explicitly rejected by the Supreme Court forty years ago.

Camara also disposed of the argument that the importance of the particular inspection involved – in that case, a health and safety inspection – would justify inspections without a warrant:

> The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. . . . But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. . . . [T]he question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable

> search warrant requirement. Thus, we do not find the public need argument dispositive.

387 U.S. at 533.

Camara was joined by a companion case, one raising the same Fourth Amendment issues for administrative inspections of commercial property. *See v. City of Seattle,* 387 U.S. 541 (1967). The Court there held that even with commercial interests, the Fourth Amendment requires a warrant for administrative inspections. 387 U.S. at 543. The Court further explained:

> As governmental regulation of business enterprise has mushroomed in recent years, the need for effective investigative techniques to achieve the aims of such regulation has been the subject of substantial comment and legislation. Official entry upon commercial property is a technique commonly adopted by administrative agencies at all levels of government to enforce a variety of regulatory laws; thus, entry may permit inspection of the structure in which a business is housed, as in this case, or inspection of business products, or a perusal of financial books and records. This Court has not had occasion to consider the Fourth Amendment's relation to this broad range of investigations. However, we have dealt with the Fourth Amendment issues raised by another common investigative technique, the administrative subpoena of corporate books and records. We find strong support in these subpoena cases for our conclusion that warrants are a necessary and a tolerable limitation on the right to enter upon and inspect commercial premises.

387 U.S. at 543-44. The Court went on to state clearly and definitively:

> We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure. We do not in any way imply that business premises may not reasonably be inspected in many more situations than private homes, nor do we question such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product. . . . We hold only that the basic component of a reasonable search under the Fourth Amendment – that it not be enforced without a suitable warrant procedure – is applicable in this context, as in others, to business as well as to residential premises.

387 U.S. at 545-46. If even commercial property is so protected from warrantless government entry, there can be no doubt about the extent of the protection given private residences.

Although *Camara* and *See* involved health and fire inspections, it is clear from the actual text of both that the Court intended their holdings to apply to all state governmental administrative inspections. These holdings were meant to be categorical and generous in application. As the Court pointedly noted, it was addressing "a technique commonly adopted by administrative agencies at all levels of government to enforce a variety of regulatory laws." 387 U.S. at 544. Such searches constitute a significant intrusion on protected interests. The holdings apply to all administrative inspections.

The legal propositions settled by these decisions are these. *First,* grants of state authority to governmental entities generally authorizing governmental officials without a warrant to enter private homes cannot be used to justify warrantless entry. *Second,* laws generally authorizing government officials without a warrant to enter private property to make inspections deemed to be within the health and safety powers of the state are not sufficient under the Fourth Amendment because such inspections place the citizen at the mercy of the unreviewed discretion of the inspecting official in the field. *Third,* broad statutory safeguards contained in ordinances authorizing warrantless health and safety inspections of houses and buildings by municipal inspectors are no substitute for individualized review, particularly when such safeguards may be invoked only at the risk of criminal penalty.

Turning to the statute on which the inspectors rely, the important thing to perceive about § 581.031, Florida Statutes, is what it does not say.[4] Plainly it does not mention or even hint at any dispensation from the requirement of a warrant. This is not a specific statute aimed at providing exceptions from the warrant requirement for administrative searches.

Other than relying on an unpublished decision of a district court which was summarily affirmed without opinion,[5] the lower court makes no attempt to explain why

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[4] Actually, this statute merely defines the duties of citrus inspectors.

[5] The lower court relied on the decision of *Grimm v. Spell,* Case No. 2:00-CV-506-FTM-29DNF (M.D.Fla. July 3, 2003), *aff'd,* 99 Fed.Appx. 881 (11th Cir. 2004), *rehearing en banc denied,* 104 Fed.Appx. 154 (2004), *cert. denied,* 543 U.S. 999 (2004), apparently adopting the reasoning that the law was not clearly established regarding the need

(Continued on following page)

it would be reasonable – four decades after the clear constitutional holdings in *Camara* and *See* – to rely on a statute to bypass the necessity for a warrant that lacks a single word in its text referring to warrants or even suggesting that the requirement of a warrant has been waived to inspect a private home's premises.

In *United States v. Lanier*, 520 U.S. 259 (1997), three years prior to the incident in this case, the Court rejected the proposition that the prior case law needed to be "fundamentally similar" in order for the law to be "clearly established." *Id.* at 268.[6]

> But general statements of the law are not inherently incapable of giving fair and clear warning, and in other instances a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though "the very action in question has [not] previously been held unlawful."

520 U.S. 259, 271, quoting from *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

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for agricultural inspectors to obtain search warrants to enter onto to private property to search for infected trees because it found that those searches were dissimilar from the *Camara* scenario of searches by housing inspectors.

[6] Although *Lanier* dealt with a criminal conviction, the issue was whether the defendant had "fair warning" that his conduct would fall within the parameters of the statute with which he was charged and convicted. The Court held that "the object of the 'clearly established' immunity standard [in civil cases] is not different from that of 'fair warning' as it relates to" the criminal statute. 520 U.S. at 270. Thus, the Court extensively discussed the "clearly established" rule of qualified immunity.

Nor does the Fourth District Court of Appeal explain why it would be reasonable to rely on such a statute in the face of all the Supreme Court decisions discussed. To allow state officials to entertain "doubts" about the long standing requirement for a warrant when this Court has spoken so clearly and definitively would be to suggest that such officials should almost always be immune from liability for ignoring the warrant requirement. To entertain such "doubts" is to denigrate the Court's role in defining constitutional responsibilities out of a misdirected policy favoring inspectors over homeowners.[7]

Here the purpose of the government's entry had no immediacy, no exigency about it. The inspectors were searching not for criminal contraband but for signs of agricultural disease. Their entry lacked any compulsion of fresh pursuit, loss of criminal evidence caused by delay, or any other recognized urgent circumstance. Unless citrus canker disappears in the time it takes to obtain a warrant, there is no conceivable reason not to require one. And if it

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[7] Recently, in *Roper v. Simmons*, 543 U.S. 551, 628-29 (2005), Justice Scalia, in a dissenting opinion, criticized the Court, *first,* for not reaching the question whether the Missouri Supreme Court, the court whose decision was under review, erred by failing to follow directly controlling Supreme Court precedent, and *second,* for not admonishing the Missouri Supreme Court for its flagrant disregard of the Court's precedent which resulted in a silent approval of a state-court decision that blatantly rejected controlling precedent. A similar event occurred in the instant case where the state appellate court flagrantly disregarded the precedent of this Court.

Notably, this is not the first time this same appellate court has "either misunderstood or ignored [this Court's] prior rulings" and where the Florida Supreme Court denied discretionary review, albeit there were different members of both courts. *Florida v. Meyers,* 466 U.S. 380, 380-81 (1984). In that instance, this Court reversed this same appellate court in a *per curiam* opinion. *Id.*

does spontaneously disappear of its own accord within that span of time, there would be little reason to inspect the trees. In short, the governmental agents have offered no reason why they could not simply have obtained an administrative search warrant to inspect these trees.[8]

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[8] Regardless of the ability of the inspectors to expeditiously obtain a search warrant, the lower courts were never concerned with that ability or inability. The lower courts dismissed the federal civil rights counts on motions to dismiss before any evidence was presented based simply – in contravention of the precedents and holdings of this Court – that qualified immunity protected the respondents because they could have reasonably interpreted the state statute to mean they were not required to first obtain a search warrant to enter the property.

CONCLUSION

The decision of the Fourth District Court of Appeal of the State of Florida is totally contrary to the forty year old precedents of this Court established in *Camara v. Municipal Court* and *See v. City of Seattle*. Despite the requirement that all lower courts must adhere to the precedents of this Court, the Fourth District Court has blatantly rejected the controlling precedent of this Court. Failure to admonish that court for its flagrant disregard of this Court's precedent would amount to a silent approval of the disregard of that state appellate court and would invite other appellate courts to disregard – at will – the precedents of this Court.

Petitioner prays for the Supreme Court to issue its writ of certiorari to the District Court of Appeal of the State of Florida, Fourth District, on the question raised and issue a *per curiam* opinion reversing the decision of the Fourth District Court of Appeal of the State of Florida to prevent a miscarriage of law by that court's flagrant disregard of this Court's precedents.

Respectfully submitted,

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January 2007

APPENDIX A

920 So.2d 650

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

CHRISTOPHER D. VAUGHAN,
Appellant,

v.

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, A STATE AGENCY OF THE STATE OF FLORIDA; KEN JENNE, AS SHERIFF OF BROWARD COUNTY; DEBORAH CONNER, INDIVIDUALLY; ANTONIO ELSO, INDIVIDUALLY; AND GIUSEPPE A. WELLER, INDIVIDUALLY,
Appellees.

Nos. 4D04-1109 & 4D04-2136

December 21, 2005

STONE, J.

This case arises out of an entry onto the plaintiff, Vaughan's, property to remove citrus trees by Elso and Conner, employees of the Department of Agriculture, and Weller, a deputy sheriff. The trial court entered orders dismissing these three defendants on grounds that they were entitled to qualified immunity.

The essential qualified immunity issue in this appeal is whether, at the time of the incident, the law clearly established that a warrant was required for the search of Vaughan's property and whether, by entering his yard and arresting Vaughan, they exceeded the parameters of reasonable conduct.

When Vaughan refused the department inspectors entry to his property, they contacted the Broward County Sheriff's Office, asking that a deputy be dispatched to assist them. Deputy Weller was sent on the call. Vaughan was arrested and the inspectors entered without consent and turned the trees to mulch. The state attorney later dismissed the charges against Vaughn, who filed a civil action against the appellees.

In finding that the individual defendants were entitled to qualified immunity, the trial court recognized that they were acting under color of authority, and that the statute, section 581.031(15)(a), Florida Statutes, appeared to grant the authority to enter the property and destroy the trees.

In *DeWald v. Wyner,* 674 So.2d 836, 839 (Fla. 4th DCA 1996), we recognized that "[i]t is well settled that public officials are immune in their individual capacities from suits for damages 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.'" (citing to *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). Immunity for an official "turns on the 'objective legal reasonableness' of the action." *Jones v. Kirkland,* 696 So.2d 1249, 1252 (Fla. 4th DCA 1997).

The burden is on the plaintiff to show that an official, acting within the scope of discretionary authority, violated the plaintiff's clearly established rights, of which a reasonable officer or inspector would have known. *Gentile v. Bauder,* 718 So.2d 781, 784 (Fla. 1998).

Clearly, the three defendants were acting within the scope of their duties; the question is whether reasonable employees in their position, at that point in time, would

believe the statute authorized this conduct and whether clearly established law prohibited such a warrantless administrative search. We note that the trial court did not dismiss the case as to the department and sheriff's office, and their potential liability is not an issue in this appeal.

Section 581.031(15)(a), Florida Statutes, grants inspectors the "power to enter into or upon any place" thought to house or contain anything that could threaten agricultural interests. Section 581.184, Florida Statutes,[1] further requires the sheriff to provide assistance and protection to the department employees and agents in obtaining access to such property.

We recognize that *Camara v. Municipal Court of the City of San Francisco,* 387 U.S. 523 (1967) held that a code enforcement search of a residence was a "significant intrusion upon the interests protected by the Fourth Amendment" and that such a search required a warrant. Conner and Elso claim that the instant situation is a novel one, and they should not be held to foresee the application of *Camara* to citrus canker enforcement under section 581.031.

The controlling court opinions in Florida concerning relevant ramifications of citrus canker enforcement were not published until after the entry onto Vaughan's land. *See, e.g., Haire v. Dep't of Agric. & Consumer Servs.,* 870 So.2d 774 (Fla. 4th DCA 2004). We cannot ignore that one reason there has been a number of lawsuits and appeals since the inception of the eradication program is precisely because inspectors, often with law enforcement assistance,

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[1] *See* 581.184(7), Fla. Stat. (2000), subsequently amended and now found in subsection (9).

were entering property without warrants to inspect or destroy citrus trees. The trial court also recognized, and it is undisputed, that the inspectors in this case had no personal interest in cutting down these trees and that they and the deputy proceeded on the belief that authorization was accorded them by the statute. Additionally, there is no indication in the record that any of the three had any training or instruction otherwise.

Although not officially reported, we deem *Grimm v. Spell,* Case No. 2:00-CV-506-FTM-29DNF (M.D. Fla. July 3, 2003), instructive. The facts in *Grimm* were very similar, except that, in that case, the plaintiff, in the face of authority, "reluctantly unlocked the gate, stepped aside, and allowed [the inspectors] to enter." The federal district court ruled that the inspectors were entitled to qualified immunity, basing the decision on its finding that the search for infected trees was dissimilar enough from the *Camara* scenario of a housing code inspector to render the law, establishing that a warrant was needed, not yet clearly established.

The issue in this appeal is not whether there was a Fourth Amendment violation, there was; the issue is not about whether Vaughn's arrest was valid, it was not; the issue is not about whether Vaughn is entitled to suppression of any evidence unlawfully obtained and a quashing of any criminal charges, he would be; the issue is not about whether the sheriff's office and/or the state should compensate Vaughn, a question not raised here; the issue is not about whether qualified immunity questions should be resolved by a jury rather than by trial court order, a question not raised before the trial court or before this court and, therefore, not preserved; and the issue is not even about whether a qualified immunity claim would

succeed on these facts for a similar incident occurring now, it would not.

The determinative issue here is whether reasonable public officials in the same circumstances and possessing the same knowledge as the defendants could have believed the law authorized entry without a warrant. *Walsingham v. Dockery,* 671 So.2d 166, 172 (Fla. 1st DCA 1996). Here, the inspectors were working under the direction of the department. Many teams of inspectors were out performing the same tasks. A detail was designated by the Broward County Sheriff's Office to work in concert with the inspectors and facilitate removal of infected and exposed citrus trees.

Notwithstanding that it may not have been necessary to arrest Vaughn, the trial court did not err in concluding that the individual defendants are entitled to qualified immunity. Therefore, the consolidated orders of dismissal are affirmed.

MAY, J., concurs.
FARMER, J., dissents with opinion.

FARMER, J., dissenting.

Two state citrus inspectors were searching for evidence of trees infected with citrus canker. At the subject premises they saw that the property had a fence around it and that the entrance was locked. After the owner refused them permission to enter without a warrant, they pushed their way into the man's property, called a deputy sheriff who actually arrested the owner, and placed him in the locked rear seat of the unopened police car. The inspectors then removed part of the fence, dismantled the gate, cut down three trees, ground the stumps into mulch, and

patched together the remnants of the fence and gate. The deputy transported the owner to the police station for formal criminal charges that were later dismissed. The owner has since sued all of them for damages, but these state officials convinced a trial judge that his case should be thrown out without a trial because of their claim to immunity from any liability.

The majority find the immunity in a state statute merely defining the general duties of citrus inspectors.[2] They hold that state officials reading the statute might reasonably have entertained good faith doubts about the applicability of United States Supreme Court holdings requiring state administrative agents to have properly issued search warrants in order to enter private residences and make public health and safety inspections. The Court thus brushes aside two Supreme Court precedents, *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523 (1967), and *See v. City of Seattle,* 387 U.S. 541 (1967), as though the Florida Legislature were free to overrule the considered decisions of our Nation's highest court.

These cases fixed the rule that the Fourth Amendment requires state and local agencies to have search warrants to make non-criminal, regulatory inspections of a

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[2] § 581.031(15)(a), Fla. Stat. (2005) ("The department has the following powers and duties: . . . to inspect plants, plant products, or other things and substances that may be capable of disseminating or carrying plant pests, noxious weeds, or arthropods, and for this purpose shall have power to enter into or upon any place and to open any bundle, package, or other container containing, or thought to contain, such material, and to take possession of such material if determined by the department to pose a threat to the agricultural or public interests of this state.").

person's home and property. In fact, these cases specifically rejected the very rationale used in this case for the claim of immunity. *Camara* and *See* explicitly decided that general statutory grants of authority to state agencies to enter private homes for health and safety regulatory inspections, as here, cannot be used to justify warrantless entry. For these reasons, I would reverse.

"[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States District Court,* 407 U.S. 297, 313 (1972); *see also State v. Titus,* 707 So.2d 706, 708 (Fla. 1998) (quoting same). "Without question, the home is accorded the full range of Fourth Amendment protections." *Lewis v. United States,* 385 U.S. 206, 210 (1967).

The Supreme Court has made clear that "[t]he Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States,* 365 U.S. 505, 511 (1961). In memorable words:

> "The maxim that 'every man's house is his castle' is made a part of our constitutional law in the clauses prohibiting unreasonable searches and seizures, and has always been looked upon as of high value to the citizen. . . . '[N]o man's house can be forcibly opened, or he or his goods be carried away after it has thus been forced, except in cases of felony; and then the sheriff must be furnished with a warrant, and take great care lest he commit a trespass. This principle is jealously insisted upon . . . '."

Weeks v. United States, 232 U.S. 383, 390-91 (1913). The Court has even added a clear explanation as to why warrants are required for searches of homes:

> "The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. . . . And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative."

McDonald v. United States, 335 U.S. 451, 455-56 (1948); *see also Chimel v. California,* 395 U.S. 752, 762 (1969) ("requirement that a search warrant be obtained is not lightly to be dispensed with, and 'the burden is on those seeking [an] exemption [from the requirement] to show the need for it . . .'.") (reemphasizing holdings in *Agnello v. United States,* 269 U.S. 20, 33 (1925) and *United States v. Jeffers,* 342 U.S. 48, 51 (1951))

In *Benefield v. State,* 160 So.2d 706 (Fla. 1964), the Florida Supreme Court also emphatically adopted for this State the same principle, according the home the highest degree of constitutional protection, saying:

> "Entering one's home without legal authority and neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial. . . . Paraphrasing one of his speeches in which [William Penn] apostrophized the home, it was said in about this fashion:
>
> > The poorest pioneer in his log cabin may bid defiance to the forces of the crown. It may be located so far in the backwoods that the sun rises this side of it; it may be unsteady; the roof may leak; the wind may blow through it; the cold may penetrate it and his dog may sleep beneath the front steps, but it is his castle that the king may not enter and his men dare not cross the threshold without his permission.
>
> . . . The law so interpreted is nothing more than another expression of the moral emphasis placed on liberty and the sanctity of the home in a free country."

160 So.2d at 708-09. More recently in *Titus,* the supreme court reemphasized the same principle, saying that "[i]t is this concept of 'home,' so sacrosanct under Fourth Amendment law, that guides our decision today." 707 So.2d at 708. In this instance, both supreme courts speak as one about the high priority placed on the privacy of the home and the unyielding necessity for a warrant as a basis for government entry.

These holdings recite an old, essential truth indispensable to this country's basic structure. The State and its officers are charged with knowing that the home is the citadel of every citizen. They are held to an understanding that without a warrant the government may not enter a home unless the person gives leave to do so. This is not a

complex thought, one taxing the comprehension of government agents. It requires no intricate analysis or explanation to grasp. The simple rule is that if for any reason the government wants to go onto a citizen's property to inspect its contents it needs a warrant granting authority to do so.

Camara could not be clearer. Yet the court today summarily waves *Camara* aside, apparently crediting the inspectors' assertion of doubts caused by section 581.031 over the clarity of *Camara's* broad general holding about non-criminal, administrative inspections of private property. *Camara* opened with the following explanation of what the Court had decided to review:

> "In *Frank v. State of Maryland,* 359 U.S. 360, [sic] Court upheld, by a five-to-four vote, a state court conviction of a homeowner who refused to permit a municipal health inspector to enter and inspect his premises without a search warrant. In *Ohio ex rel. Eaton v. Price,* 364 U.S. 263, a similar conviction was affirmed by an equally divided Court. *Since those closely divided decisions, more intensive efforts at all levels of government to contain and eliminate urban blight have led to increasing use of such inspection techniques,* while numerous decisions of this Court have more fully defined the Fourth Amendment's effect on state and municipal action. *In view of the growing nationwide importance of the problem, we noted probable jurisdiction* in this case and in See v. City of Seattle, 387 U.S. 541, *to re-examine whether administrative inspection programs, as presently authorized and conducted, violate Fourth Amendment rights as those rights are enforced against the States through the Fourteenth Amendment.*" [e.s.]

387 U.S. at 525. It is important to perceive that the Court was addressing not simply the San Francisco health inspection at issue in that case but, as the Court said, "whether administrative inspection programs, as presently authorized and conducted, violate Fourth Amendment rights." 387 U.S. at 525.

At issue in *Camara* was a health and safety inspection of a private residential apartment unit by a city inspector. In finding that a warrantless entry of an *administrative inspector* was a violation of settled Fourth Amendment law, the court explained:

> "The basic purpose of this Amendment, *as recognized in countless decisions of this Court,* is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The Fourth Amendment thus gives concrete expression to *a right of the people which 'is basic to a free society.'*" [e.s.]

387 U.S. at 528. The Court emphasized that:

> "*one governing principle,* justified by history and by current experience, *has consistently been followed:* except in certain carefully defined classes of cases, *a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.*" [e.s.]

387 U.S. at 528-29.

Camara also specifically rejected any notion that warrantless administrative searches of the kind involved in this case are tolerable because the kind of intrusion they represent is less important than criminal searches:

> "We may agree that a routine inspection of the physical condition of private property is a

> less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. . . . But we cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."

387 U.S. at 530. In describing the use of administrative inspections by governmental authorities, the court noted:

> "Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. . . . [E]ven if the occupant possesses sufficient fortitude to . . . risk [refusing entry] . . . he may never learn any more about the reason for the inspection than *that the law generally allows housing inspectors to gain entry.* The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. *This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search.* We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty." [e.s., c.o.]

387 U.S. at 532-33. The highlighted words are critical to the claim of immunity in this case. They make clear that laws generally granting state inspectors the authority to enter any place, including homes, cannot be understood as a dispensation from the warrant requirement. To do so would grant inspectors in the field discretion to invade private property, and the Court has "consistently circumscribed" such grants of discretion. In other words the very justification for constitutional doubts relied on by the majority was explicitly rejected by the Supreme Court forty years ago.

Camara also disposed of the argument that the importance of the particular inspection involved–in that case, a health and safety inspection–would justify inspections without a warrant:

> "The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. . . . But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. . . . [T]he question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn

> depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive." [e.s., c.o.]

387 U.S. at 533.

Camara was joined by a companion case, one raising the same Fourth Amendment issues for administrative inspections of commercial property. *See v. City of Seattle,* 387 U.S. 541 (1967). The Court there held that even with commercial interests, the Fourth Amendment requires a warrant for administrative inspections. 387 U.S. at 543. The Court further explained:

> "As governmental regulation of business enterprise has mushroomed in recent years, the need for effective investigative techniques to achieve the aims of such regulation has been the subject of substantial comment and legislation. *Official entry upon commercial property is a technique commonly adopted by administrative agencies at all levels of government to enforce a variety of regulatory laws; thus, entry may permit inspection of the structure in which a business is housed, as in this case, or inspection of business products, or a perusal of financial books and records. This Court has not had occasion to consider the Fourth Amendment's relation to this broad range of investigations.* However, we have dealt with the Fourth Amendment issues raised by another common investigative technique, the administrative subpoena of corporate books and

> records. *We find strong support in these subpoena cases for our conclusion that warrants are a necessary and a tolerable limitation on the right to enter upon and inspect commercial premises.*" [e.s., f.o.]

387 U.S. at 543-44. The Court went on to add:

> "It is now settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome. The agency has the right to conduct all reasonable inspections of such documents which are contemplated by statute, but it must delimit the confines of a search by designating the needed documents in a formal subpoena. *In addition, while the demand to inspect may be issued by the agency, in the form of an administrative subpoena, it may not be made and enforced by the inspector in the field, and the subpoenaed party may obtain judicial review* of the reasonableness of the demand prior to suffering penalties for refusing to comply." [e.s., f.o.]

387 U.S. at 544-45. Summing up its holding in *See,* the Court stated clearly and definitively:

> "We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure. We do not in any way imply that business premises may not reasonably be inspected *in many more situations than private homes,* nor do we question such accepted regulatory techniques

> as licensing programs which require inspections prior to operating a business or marketing a product. . . . We hold only that the basic component of a reasonable search under the Fourth Amendment–that it not be enforced without a suitable warrant procedure–is applicable in this context, as in others, to business as well as to residential premises." [e.s., f.o.]

387 U.S. at 545-46. If even commercial property is so protected from warrantless government entry, their [sic] can be no doubt about the extent of the protection given private residences.

Although *Camara* and *See* involved health and fire inspections, it is clear from the actual text of both that the Court intended their holdings to apply to all state governmental administrative inspections. These holdings were meant to be categorical and generous in application. As the Court pointedly noted, it was addressing "*a technique commonly adopted by administrative agencies at all levels of government to enforce a variety of regulatory laws.*" 387 U.S. at 544. Such searches constitute a significant intrusion on protected interests. The holdings apply to all administrative inspections.

The legal propositions settled by these decisions are these. *First,* grants of state authority to governmental entities generally authorizing governmental officials without a warrant to enter private homes cannot be used to justify warrantless entry. *Second,* laws generally authorizing government officials without a warrant to enter private property to make inspections deemed to be within the health and safety powers of the state are not sufficient under the Fourth Amendment because such inspections place the citizen at the mercy of the unreviewed discretion

of the inspecting official in the field. *Third,* broad statutory safeguards contained in ordinances authorizing warrantless health and safety inspections of houses and buildings by municipal inspectors are no substitute for individualized review, particularly when such safeguards may be invoked only at the risk of criminal penalty.

Turning to the statute on which the inspectors rely, the important thing to perceive about section 581.031 is what it does not say. Plainly it does not mention or even hint at any dispensation from the requirement of a warrant. This is not a specific statute aimed at providing exceptions from the warrant requirement for administrative searches. The inspectors make no attempt to explain why it would be reasonable–four decades after the clear constitutional holdings in *Camara* and *See*–to rely on a statute to bypass the necessity for a warrant that lacks a single word in its text referring to warrants or even suggesting that the requirement of a warrant has been waived to inspect a private home's premises.

Nor do they explain why it would be reasonable to rely on such a statute in the face of all the Supreme Court decisions discussed. To allow state officials to entertain "doubts" about the long standing requirement for a warrant when the Court has spoken so clearly and definitively would be to suggest that such officials should almost always be immune from liability for ignoring the warrant requirement. To entertain such "doubts" is to denigrate the Supreme Court's role in defining constitutional

responsibilities out of a misdirected policy favoring inspectors over homeowners.[3]

Here the purpose of the government's entry had no immediacy, no exigency about it. The inspectors were searching not for criminal contraband but for signs of agricultural disease. Their entry lacked any compulsion of fresh pursuit, loss of criminal evidence caused by delay, or any other recognized urgent circumstance. Unless citrus canker disappears in the time it takes to get a warrant, there is no conceivable reason not to require one. And if it does spontaneously disappear of its own accord within that span of time, there would be little reason to inspect the trees. In short, the governmental agents have offered no reason why they could not simply have gotten a warrant to inspect these trees.

Personally I believe the utter absence of any urgency–or in Fourth Amendment parlance, any exigent circumstances–should eliminate entirely any consideration of whether an officer might have entertained good faith doubts about the effect of *Camara* and *See* after the enactment of the statute. I would allow officers to use reasonable doubts for immunity only where there is some exigency in the circumstances, some reason for haste without which something constitutionally significant might be lost.

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[3] The trial court's concern for the ability of the state to find inspectors to do this job without immunity is not only misdirected, but is contradicted by state statutes providing for indemnification of its agents.

Procedurally, I think it is also clear that their claim of immunity could not possibly have been decided summarily–that is, without a trial–in favor of the officials in this case. In *DeWald v. Wyner,* 674 So.2d 836 (Fla. 4th DCA 1996), we explained the burden on qualified immunity thus:

> "First, the public official must show that the acts complained of were 'within the scope of his discretionary authority when the allegedly wrongful acts occurred.' Second, the plaintiff must show that the public official's actions 'violated clearly established constitutional law.' *Rich v. Dollar,* 841 F.2d 1558, 1563-64 (11th Cir.1988). Clearly established law must be determined 'through the eyes of an objective, reasonable government official.' *Nicholson v. Georgia Dept. of Human Resources,* 918 F.2d 145, 147 (11th Cir.1990)."
>
> After a public official has shown that he was acting within his discretionary authority when the event occurred, the burden then shifts to the plaintiff to establish that the official's actions violated clearly established constitutional law.

674 So.2d at 840; *see also Naturalist Soc. Inc. v. Fillyaw,* 958 F.2d 1515, 1523-24 (11th Cir. 1992). The party claiming immunity must establish by law a grant of discretion that authorizes the conduct about which complaint has been made. Discretion is not available when a "clearly established constitutional law" precludes it.

Thus, no burden shifts to the party opposing immunity until those claiming immunity show that there was no "clearly established constitutional law" on the subject and that the official had discretion to do what he did. In the

face of the law just explicated, I do not understand how a citrus canker inspector can be heard to argue that an "objective, reasonable government official" could conceivably harbor any doubts about the necessity for a warrant. Withal, there is simply no law or fact to support the inspectors' claim that they had a good faith belief they could enter without a warrant.

Even if I could overlook the lack of a warrant, I cannot ignore the totality of the ensuing conduct of the inspectors and deputy. Their "inspection" was attended by a fierce mutilation. They cut down the gate, they cut down the fence, and then they cut down the trees and ground them into dust. They even went so far as to arrest the owner, who was merely insisting on a warrant, as is his right. The zeal with which they visited destruction on plaintiff suggests a willingness to cut down everything, even the law, to force their way into private residential premises and destroy property located within.

It is a zeal startlingly like the determination of Thomas More's son-in-law to do anything to get rid of Rich, and Roper's horror that More would insist on due process of law for the man:

> *More:* What would you do? Cut a great road through the law to get after the devil?
>
> *Roper:* I'd cut down every law in England to do that!
>
> *More:* Oh? . . . And when the last law was down, and the Devil turned round on you–where would you hide, Roper, the laws all being flat? . . . This country's planted thick with laws from coast to coast–man's laws, not God's–and if you cut them down . . . d'you really think you could stand

> upright in the winds that would blow then? . . . Yes, I'd give the Devil benefit of law, for my own safety's sake.

Robert Bolt, A MAN FOR ALL SEASONS, (Vintage 1990). Like Roper, these state inspectors would cut down settled constitutional adjudication to get at their devil. Like More, I think law's wardens are bound to the law, especially the one settled by the highest authority. Doubts in the minds of state agents should be deemed in good faith only when the law has not been clearly settled by the highest Court.

This court should also strive to make clear that the duty to inspect trees can be properly done without treating property owners like convicted felons. This unwarranted use of governmental powers could be seen by a jury as discrediting the inspectors' claim of good faith. Surely the arrest of a law-abiding citizen and the ferocious destruction of his property could not be justified by any internal urgency these inspectors fancied. Nothing suggested by anyone would authorize an arrest of the owner and the despoiling of property beyond infected citrus trees. They have failed utterly to show that the immunity claim is legally valid and clear enough to avoid submitting it to a jury.

* * *

Consolidated appeals from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Miette K. Burnstein, Judge; L.T. Case No. 03-017892 (21).

Gary Kollin of Gary Kollin, P.A., Fort Lauderdale, and Diane H. Tutt of Diane H. Tutt, P.A., Davie, for appellant.

Wesley R. Parsons and Jack R. Reiter of Adorno & Yoss, P.A., Miami, for Appellees–Deborah Conner & Antonio Elso.

Michael R. Piper of Johnson, Anselmo, Murdoch, Burke, Piper & McDuff, P.A., Fort Lauderdale, for Appellee–Giuseppe Weller.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

March 10, 2006

CASE NO.: 4D04-1109
4D04-2136
L.T. No.: 03-17892 CACE (21)

CHRISTOPHER D. VAUGHAN v. FLORIDA DEPARTMENT OF AGRICULTURE, ETC., ET AL.

Appellant/Petitioner(s), Appellee/Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed January 19, 2006, for rehearing and motion for rehearing *en banc* is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Gary Kollin Diane H. Tutt Wesley R. Parsons
Jack R. Reiter Michael R. Piper

cd

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk [SEAL]
Fourth District Court of Appeal

APPENDIX C

Supreme Court of Florida

THURSDAY, AUGUST 17, 2006

CASE NO.: SC06-725
Lower Tribunal Nos.: 4D04-1109,
4D04-2136

CHRISTOPHER D. VAUGHAN vs. FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, ETC., ET AL.

Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ANSTEAD, PARIENTE, QUINCE and BELL, J.J., concur.
LEWIS, C.J., dissents.

A True Copy
Test:
/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

APPENDIX D

CHRISTOPHER D. VAUGHAN, Plaintiff, v. FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, a state agency of the State of Florida, KEN JENNE, as SHERIFF of BROWARD COUNTY, DEBORAH CONNER, individually, ANTONIO ELZO, individually, and GIUSEPPE A. WELLER, individually, Defendants. /	IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA Case No.: CACE 03017892(21) **AMENDED COMPLAINT**

COMES NOW, Plaintiff CHRISTOPHER D. VAUGHAN and sues Defendants FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, a state agency of the State of Florida, KEN JENNE as the SHERIFF of BROWARD COUNTY, DEBORAH CONNER, individually, ANTONIO ELZO, individually, and GIUSEPPE A. WELLER, individually, and states:

1. This is an action for damages in excess of $15,000, exclusive of interests and costs. This Court has concurrent jurisdiction with federal courts over the federal claims brought by Plaintiff. This Court has original jurisdiction over the state claims brought by Plaintiff.

2. At all times material hereto, Defendant FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, (hereinafter 'FDACS') is a state agency of the

State of Florida, and has an office in Broward County, Florida for the transaction of its customary business.

3. Defendant KEN JENNE (hereinafter 'SHERIFF') is the Sheriff of Broward County, Florida, and is being sued in his official capacity. As SHERIFF, he is responsible through his deputies, employees, servants, and agents for enforcing the regulations of the Broward Sheriff, and the Laws of the State of Florida and for ensuring that his deputies, employees, servants, and agents obey the laws of the State of Florida and the United States.

4. At all times material hereto, Defendant DEBORAH CONNER (hereinafter 'CONNER') was over 18 years of age, and was *sui juris.*

5. At all times relevant hereto, CONNER was an Agricultural Technician III, acting as a citrus tree Inspection and Removal Squad Boss employed by FDACS, and was acting in the course and scope of her employment in FDACS' Citrus Canker Eradication Program.

6. At all times material hereto, Defendant ANTONIO ELZO (hereinafter 'ELZO') was over 18 years of age, and was *sui juris.*

7. At all times relevant hereto, ELZO was an Agricultural Technician III, acting as a citrus tree Inspection and Removal Squad Boss employed by FDACS, and was acting in the course and scope of his employment for FDACS' Citrus Canker Eradication Program.

8. At all times material hereto, Defendant GIUSEPPE A. WELLER (hereinafter 'WELLER') was over 18 years of age, and was *sui juris.*

9. At all times relevant hereto, WELLER was a deputy sheriff employed by SHERIFF, and was acting in the course and scope of his employment for SHERIFF as a deputy sheriff.

10. At all times material to this Complaint, Defendants FDACS, SHERIFF, CONNER, ELZO and WELLER, acted toward Plaintiff VAUGHAN under color of the statutes, ordinances, customs, and usage of the State of Florida, the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, Broward County, and BROWARD COUNTY SHERIFF KEN JENNE'S OFFICE.

11. At all times material hereto, Plaintiff CHRISTOPHER D. VAUGHAN (hereinafter 'VAUGHAN') was over 18 years of age, was a resident of Broward County and was *sui juris*.

13. Plaintiff VAUGHAN has agreed to pay his attorney a reasonable fee for the services herein.

ALLEGATIONS OF FACT

13. On or about September 12, 2000, Plaintiff VAUGHAN owned a home located at 4780 Peters Road, in Plantation, in Broward County, Florida. Peters Road is also commonly known as SW 12th Street.

14. On or about September 12, 2000, Plaintiff owned and enjoyed the use of a fence along the boundaries of his property at 4780 Peters Road.

15. On or about September 12, 2000, Plaintiff VAUGHAN owned and enjoyed three citrus trees located on his property at 4780 Peters Road.

16. On or about September 12, 2000, CONNER and ELZO went to the home of Plaintiff VAUGHAN and demanded entry onto VAUGHAN'S property for the purpose of cutting down the three citrus trees belonging to VAUGHAN. As part of their demand for entry onto VAUGHAN'S property, CONNER and ELZO requested VAUGHAN open a lock that secured the fence surrounding his property.

17. CONNER and ELZO never obtained a warrant for the search of VAUGHAN'S property and seizure of VAUGHAN'S trees.

18. On or about September 12, 2000, VAUGHAN demanded CONNER and ELZO produce a warrant for the search for and seizure of citrus trees on his property.

19. VAUGHAN denied access to his property upon CONNER and ELZO'S failure to produce a warrant for the search for and seizure of citrus trees on VAUGHAN'S property.

20. It was and is illegal in Florida for FDACS inspectors to search private property to inspect for citrus canker without consent of the homeowner or without a warrant; doing so violates the Fourth Amendment to the United States Constitution, and Article I, Sec. 12 of the Florida Constitution, which prohibit unreasonable warrantless searches and seizures.

21. After VAUGHAN refused to allow CONNER and ELZO onto his property, CONNER and ELZO retreated to an unknown location to discuss how to search VAUGHAN'S property and seize the citrus trees VAUGHAN owned.

22. CONNER and ELZO agreed to enter onto VAUGHAN'S land illegally to search for and seize citrus trees belonging to VAUGHAN without a warrant.

23. CONNER and ELZO then further agreed to contact the Office of KEN JENNE as SHERIFF OF BROWARD COUNTY and secure the assistance of SHERIFF'S deputies to enter onto VAUGHAN'S land to assist in the search for and seizure of citrus trees belonging to VAUGHAN without a warrant.

24. SHERIFF'S deputies were then contacted.

25. Contacting SHERIFF'S deputies set into motion CONNER and ELZO'S agreement to execute an illegal search for and illegal seizure of VAUGHAN'S citrus trees.

26. At or about 8:00 AM, on or about September 12, 2000, SHERIFF'S deputy WELLER was dispatched to VAUGHAN'S home in response to CONNER and ELZO'S call.

27. On or before September 12, 2000, SHERIFF formed a special detail to assist FDACS' citrus tree inspection and seizure squads.

28. At or about 8:15 AM, WELLER arrived at VAUGHAN'S home in response to the SHERIFF'S dispatch.

29. Upon WELLER'S arrival at VAUGHAN'S property, CONNER and ELZO informed WELLER of their agreement to execute an illegal warrantless search for and seizure of citrus trees on VAUGHAN'S land.

30. WELLER agreed to assist CONNER and ELZO in their plan to execute an illegal search for and seizure of

VAUGHAN'S citrus trees by arresting VAUGHAN illegally and without probable cause if VAUGHAN did not yield to CONNER and ELZO'S demand to search for and seize his citrus trees without a warrant.

31. WELLER then advised VAUGHAN he would be placed under arrest if VAUGHAN did not consent to the illegal search for and seizure of citrus trees.

32. After WELLER'S warning, VAUGHAN again refused to allow CONNER and ELZO to perform an illegal search for and seizure of citrus trees.

33. Immediately after VAUGHAN denied CONNER and ELZO access to his property, WELLER placed him under arrest without probable cause or legal authority for the charge of obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02. WELLER physically seized VAUGHAN, handcuffed him, and placed him in the rear of the patrol vehicle assigned to WELLER by SHERIFF. The rear passenger compartment had no air-conditioning and poor circulation.

34. Once WELLER secured VAUGHAN in the SHERIFF'S patrol car, CONNER and ELZO began their warrantless and illegal search for and seizure of VAUGHAN'S citrus trees.

35. To initiate their search, CONNER and ELZO directed their tree removal squad to tear down sections of VAUGHAN'S fence to gain access to VAUGHAN'S property.

36. When VAUGHAN'S fence was taken down, CONNER and ELZO began their illegal search of VAUGHAN'S property for citrus trees. Upon finding VAUGHAN'S citrus trees, CONNER and ELZO directed

their Inspection and Removal Squad to illegally seize VAUGHAN'S trees by the method of cutting them down, removing the trees, and grinding the stumps into mulch.

37. The illegal search for and seizure of VAUGHAN'S citrus trees performed by CONNER and ELZO lasted between one and two hours, during which time, VAUGHAN was illegally held without any legal authority by WELLER in the rear of the SHERIFF'S patrol vehicle.

38. When CONNER and ELZO completed the illegal search for and seizure of VAUGHAN'S trees, WELLER issued VAUGHAN a Notice to Appear for obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

39. VAUGHAN declined to sign the Notice to Appear ticket issued by WELLER because VAUGHAN'S arrest by WELLER was illegal and because the warrantless search for and seizure of VAUGHAN'S citrus trees by CONNER and ELZO were illegal.

40. WELLER then transported VAUGHAN to SHERIFF'S Detention Center in Fort Lauderdale, where VAUGHAN was booked and fingerprinted for obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

41. VAUGHAN was then held at SHERIFF'S Detention Center until he posted bond and was released.

42. The charge of obstructing justice without violence against VAUGHAN was later dismissed when the Broward State Attorney's Office filed a "No Information" in his case.

COUNT 1 – VIOLATION OF 42 U. S. C. § 1983: CONSPIRACY DEFENDANT DEBORAH CONNER, DEFENDANT ANTONIO ELZO AND DEFENDANT GIUSEPPE A. WELLER

43. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 above with the same force and effect as if herein set forth.

44. At all times relevant herein, the conduct of Defendants CONNER, ELZO and WELLER were subject to 42 U.S.C. § 1983.

45. This cause of action is brought by the Plaintiff against Defendants CONNER, ELZO and WELLER for deprivation of VAUGHAN'S constitutional rights within the meaning of 42 U.S.C. § 1983.

46. Acting under the color of law, Defendants CONNER, ELZO and WELLER effected a denial of VAUGHAN'S rights, privileges or immunities secured by the Fourth Amendment to the United States Constitution.

47. CONNER, ELZO and WELLER engaged in discussion regarding illegally searching VAUGHAN'S property for citrus trees and illegally seizing them on or about September 12, 2000.

48. As CONNER, ELZO and WELLER concluded the above mentioned discussion, they had a meeting of the minds in that they agreed to, or conspired to, place VAUGHAN under arrest illegally and without legal authority for obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

49. CONNER, ELZO and WELLER then agreed to, or conspired to, perform a warrantless and illegal search of

VAUGHAN'S property for citrus trees, and then seize VAUGHAN'S trees without legal authority.

50. The purpose of the conspiracy agreement between CONNER, ELZO and WELLER, was to deprive VAUGHAN of his rights and privileges guaranteed to him by the Fourth Amendment to the United States Constitution.

51. In furtherance of the conspiracy formulated by CONNER, ELZO and WELLER, WELLER placed VAUGHAN under arrest without legal authority on the charge of obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

52. As a result of the concerted unlawful and malicious conspiracy of Defendants CONNER, ELZO and WELLER, VAUGHAN was deprived of his right to be free from unreasonable and warrantless searches and seizures, and the due course of justice was impeded, in violation of the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

53. As a further result of the concerted unlawful and malicious conspiracy of Defendants CONNER, ELZO and WELLER, VAUGHAN suffered damage to his good name and reputation, emotional distress and extreme anguish, and the loss of use and enjoyment of his fence and trees and a trespass to his property.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendants CONNER, ELZO and WELLER:

a. Judgment against Defendants CONNER, ELZO and WELLER for compensatory damages in excess of in excess of [sic] fifteen thousand dollars ($15,000);

b. Attorney's fees;

c. Costs of suit;

d. Trial by jury as to all issues so triable; and

e. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 2 – VIOLATION OF 42 U. S. C. § 1983: FALSE ARREST DEFENDANT GIUSEPPE A. WELLER

54. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 above with the same force and effect as if herein set forth.

55. At all times relevant herein, the conduct of Defendant WELLER was subject to 42 U.S.C. § 1983.

56. This cause of action is brought by the Plaintiff against Defendant WELLER for deprivation of VAUGHAN'S constitutional rights within the meaning of 42 U.S.C. § 1983.

57. On September 12, 2000, WELLER falsely arrested VAUGHAN, without legal authority or probable cause, for the charge of obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

58. No probable cause existed for the arrest of Plaintiff VAUGHAN. Furthermore, the detention of Plaintiff VAUGHAN was performed without legal authority since VAUGHAN had the right to deny access to his property without a valid search warrant; therefore VAUGHAN did not obstruct justice. At no time did WELLER have the legal authority to seize, arrest, or

detain VAUGHAN for the alleged criminal act which was never committed.

59. As a result, VAUGHAN was deprived of his right to be free from arrest without probable cause, and the due course of justice was impeded, in violation of the Fourth Amendment to the Constitution of the United States.

60. As a further result of the unlawful arrest of VAUGHAN, VAUGHAN suffered damage to his good name and reputation, emotional distress and extreme anguish, and the loss of use and enjoyment of his freedom.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendant WELLER:

a. Judgment against Defendant WELLER for compensatory damages in excess of fifteen thousand dollars ($15,000);

b. Attorney's fees;

c. Costs of suit;

d. Trial by jury as to all issues so triable; and

e. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 3 – VIOLATION OF 42 U. S. C. § 1983: ILLEGAL SEARCH AND SEIZURE DEFENDANT DEBORAH CONNER, DEFENDANT ANTONIO ELZO AND DEFENDANT GIUSEPPE A. WELLER

61. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 above with the same force and effect as if herein set forth.

62. At all times relevant herein, the conduct of Defendants CONNER, ELZO and WELLER was subject to 42 U.S.C. § 1983.

63. This cause of action is brought by the Plaintiff against Defendants CONNER, ELZO and WELLER for deprivation of VAUGHAN'S constitutional rights within the meaning of 42 U.S.C. § 1983.

64. Acting under the color of law, Defendants CONNER, ELZO and WELLER effected a denial of VAUGHAN'S rights, privileges or immunities secured by the Fourth Amendment to United States Constitution.

65. On September 12, 2000, Defendants CONNER, ELZO and WELLER, conducted a illegal search of VAUGHAN'S property and VAUGHAN'S property's curtilage without VAUGHAN'S consent or a lawful warrant.

66. As a result, VAUGHAN was deprived of his right to be free from unreasonable and warrantless searches and seizures, and the due course of justice was impeded, in violation of the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

67. As a further result of the illegal search of VAUGHAN'S property by Defendants CONNER, ELZO and WELLER, VAUGHAN suffered damage to his good name and reputation, emotional distress and extreme anguish, and the loss of use and enjoyment of his fence and trees.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendants CONNER, ELZO and WELLER:

a. Judgment against Defendants CONNER, ELZO and WELLER for compensatory damages in excess of fifteen thousand dollars ($15,000);

b. Attorney's fees;

c. Costs of suit;

d. Trial by jury as to all issues so triable; and

e. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 4 - FALSE ARREST
DEFENDANT KEN JENNE AS SHERIFF
OF BROWARD COUNTY

68. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 above with the same force and effect as if herein set forth.

69. All conditions precedent to the filing of this lawsuit have been fulfilled pursuant to Florida Statutes §768.28(6)(a)-(d). (Attached hereto as EXHIBIT "A")

70. Plaintiff VAUGHAN presented his claims in writing to Defendants FDACS and SHERIFF by means of letters of demand for damages on or about August 12, 2002 (attached hereto as EXHIBIT "A"), within three (3) years of the accrual of cause of action, and presented his claims to the Florida Department of Insurance in writing on or about August 12, 2002, within three (3) years of the accrual of cause of action.

71. Defendants FDACS and SHERIFF, and the Florida Department of Insurance never made final disposition of the Plaintiff's written claims within six (6) months of their presentation.

72. On September 12, 2000, WELLER as a deputy sheriff and agent of Defendant SHERIFF, arrested Plaintiff VAUGHAN for the charge of obstructing justice without violence, allegedly in violation of Florida Statutes § 843.02.

73. Said arrest was without probable cause

74. The actions by Defendant SHERIFF in arresting Plaintiff VAUGHAN without probable cause were taken in the absence of lawful authority.

75. The actions of Defendant SHERIFF constitute false arrest of Plaintiff VAUGHAN.

76. As a direct and proximate result of Defendant SHERIFF'S false arrest of Plaintiff VAUGHAN, Plaintiff VAUGHAN has suffered grievously, has been brought into public scandal, and with great humiliation, mental suffering, and damaged reputation.

77. As a further direct and proximate result of Defendant SHERIFF'S false arrest of Plaintiff VAUGHAN, VAUGHAN was arrested and subjected to booking photos and fingerprinting, criminal prisoner processing, and detention in the jail. VAUGHAN has suffered grievously, has been brought into public scandal and with great humiliation, mental suffering and damaged reputation. As a further direct and proximate result of said negligence, VAUGHAN has further suffered mental anguish, loss of capacity for the enjoyment of life, and loss of freedom.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendant KEN JENNE AS SHERIFF OF BROWARD COUNTY:

a. Judgment against Defendant SHERIFF for compensatory damages in excess of fifteen thousand dollars ($15,000);

b. Costs of suit;

c. Trial by jury as to all issues so triable; and

d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 5 – TRESPASS TO CHATTEL DEFENDANT FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND DEFENDANT KEN JENNE AS SHERIFF OF BROWARD COUNTY

78. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 and paragraphs 69 through 71 above with the same force and effect as if herein set forth.

79. On or about September 12, 2000, Plaintiff VAUGHAN owned a fence.

80. On or about September 12, 2000, Defendants FDACS and SHERIFF JENNE seized the Plaintiff's fence without consent or legal authority.

81. When the Defendants FDACS and SHERIFF JENNE seized the Plaintiff's fence without consent or legal authority, they did so intentionally.

1. As a result of the Defendants' trespass upon the Plaintiff's chattel, Plaintiff suffered damages, including loss of possession and loss of rightful enjoyment of his chattel, his fence.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendants FDACS and SHERIFF:

a. Judgment for compensatory damages against Defendants FDACS and SHERIFF in excess of fifteen thousand dollars ($15,000);

b. Costs of suit;

c. Trial by jury as to all issues so triable;

d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 6 - TRESPASS TO LAND
DEFENDANT FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND DEFENDANT KEN JENNE AS SHERIFF OF BROWARD COUNTY

83. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 and paragraphs 69 through 71 above with the same force and effect as if herein set forth.

84. On September 12, 2000, VAUGHAN was in possession of the following described real property in Broward County, Florida: "BROADVIEW PARK SECTION 3 39-13 B LOT 16 BLOCK 8."

85. On that date Defendants FDACS and SHERIFF entered on the real property described in the preceding paragraph without VAUGHAN'S consent or permission.

86. Plaintiff VAUGHAN warned Defendants FDACS and SHERIFF before the entry onto his property that the entry would be a trespass and directed Defendants not to enter on the property.

87. Defendants FDACS and SHERIFF willfully entered on the property after VAUGHAN'S warning and refused to leave the property after repeated demands by VAUGHAN that Defendants FDACS and SHERIFF do so.

88. FDACS and SHERIFF then seized VAUGHAN'S citrus trees and ground their stumps.

89. VAUGHAN'S property depreciated in value because of FDACS and SHERIFF'S trespass and VAUGHAN lost the use of the property during the time of the trespass

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendants FDACS and SHERIFF:

a. Judgment for compensatory damages against Defendants FDACS and SHERIFF in excess of fifteen thousand dollars ($15,000);

b. Costs of suit;

c. Trial by jury as to all issues so triable;

d. Such other relief as this Honorable Court may deem just and appropriate.

COUNT 7 – CONVERSION
DEFENDANT FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND DEFENDANT KEN JENNE AS SHERIFF OF BROWARD COUNTY

90. Plaintiff repeats and realleges and incorporates by reference the allegations in paragraphs 1 through 42 and paragraphs 69 through 71 above with the same force and effect as if herein set forth.

91. On or about September 12, 2000, VAUGHAN was in possession of the following described real property in Broward County, Florida: "BROADVIEW PARK SECTION 3 39-13 B LOT 16 BLOCK 8."

92. Located on VAUGHAN'S property described above were three fully grown fruit-bearing citrus trees that were perfectly healthy and free from citrus canker, having the full market value of fully grown, commercially viable citrus trees.

93. On or about September 12, 2000, Defendants FDACS and SHERIFF willfully entered VAUGHAN'S property after VAUGHAN'S warning and refused to leave the property after repeated demands by VAUGHAN that Defendants FDACS and SHERIFF do so.

94. On the date in question, FDACS and SHERIFF seized VAUGHAN'S citrus trees and ground their stumps, thereby .converting VAUGHAN'S trees to FDACS and SHERIFF'S own use, causing VAUGHAN the loss of the full market value of the trees and any fruit the trees would bear.

WHEREFORE, Plaintiff CHRISTOPHER D. VAUGHAN prays in regard to Defendants FDACS and SHERIFF:

a. Judgment for compensatory damages against Defendants FDACS and SHERIFF in excess of fifteen thousand dollars ($15,000);

b. Costs of suit;

c. Trial by jury as to all issues so triable;

d. Such other relief as this Honorable Court may deem just and appropriate.

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By: _____
GARY KOLLIN, ESQ.
FLORIDA BAR NO. 282431

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed to and delivered by mail to Michael Piper, Esq.,attorney for Sheriff, 790 E. Broward Blvd., Suite 400, Ft. Lauderdale, Florida 33301 and to Wesley R. Parsons, Esq., Adorno & Yoss, P.A., 2601 S. Bayshore Blvd., #1600, Miami, FL 333133 [sic] on November __, 2003.

By: _____
GARY KOLLIN, ESQ.

[Exhibits Omitted In Printing]

No. 06-963

IN THE

Supreme Court of the United States

CHRISTOPHER D. VAUGHAN,

Petitioner,

v.

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENTS DEBORAH CONNER, ANTONIO ELZO, AND FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

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I

INTRODUCTION

Petitioner, Christopher D. Vaughan ("Vaughan"), has not demonstrated a sufficient basis for invoking this Court's very narrow certiorari jurisdiction. This Court has already examined and crafted the law regarding the primary issue presented in his Petition—the parameters of qualified immunity afforded a government official—and Vaughan does not demonstrate that Florida's Fourth District Court of Appeal or the Florida Supreme Court has failed to apply federal or constitutional law correctly.

The Fourth District Court of Appeal's conclusion, and the Florida Supreme Court's denial of discretionary jurisdiction, is completely correct. Respondents, Deborah Conner and Antonio Elzo, employees of the Department of Agriculture and Consumer Services (the "Department"),[1] had a reasonable basis to believe they were authorized to enter Vaughan's yard to look at leaves on citrus trees pursuant to a statutory grant of authority and the declared state of emergency regarding citrus canker in Florida. At the time the Department employees entered Vaughan's yard for this limited purpose, no Florida Court had contravened the statutory authority to conduct a warrantless search and, in fact, multiple Florida courts had recognized the exigent circumstances posed by citrus canker that required immediate inspection and tree removal. The Court should therefore deny the Petition.

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1. Although named as a defendant below, the Department is not subject to the issue on review pertaining to the right to sue the individual employees.

REASONS FOR DENYING THE PETITION

The Court should deny the Petition because the law was not so well settled at the time the Department employees entered Vaughan's property that they should be denied qualified immunity and held individually liable for alleged Fourth Amendment violations.

When the Department employees entered Vaughan's property for the limited purpose of inspecting leaves on citrus trees, Florida law clearly authorized the limited intrusion due to exigent circumstances presented by citrus canker's onslaught. That a Florida state court years after the examination decreed that state authorities needed a warrant to inspect dooryard citrus cannot override qualified immunity.

STATEMENT OF THE CASE

The long battle fought by Florida's Citrus Canker Eradication Program ("CCEP") was reviewed by Florida's Supreme Court in *Haire v. Dep't of Agriculture*, 870 So. 2d 774 (Fla. 2004), citing *Dep't of Agriculture v. Pompano Beach*, 792 So. 2d 539, 541-42 (Fla. 4th DCA 2001):

> Citrus canker was discovered in Florida in 1914 and eradication programs continued through the mid 1930s. In the mid 1980s, an Asian strain of citrus canker, xanthomonas axonopodis pv. citri., the strain of citrus canker at issue in this case, was discovered in Manatee County. It was considered eradicated in 1992 and the eradication program halted in 1994. However, in 1995 an outbreak was discovered around the Miami International Airport.

Citrus canker is a disease that is caused by a bacterial organism that attacks the fruits, leaves and stems of a citrus plant. It causes defoliation, fruit drop and loss of yield. It also causes blemishes on the fruit and a loss of quality. In severe cases, it can cause girdling of the stems and death of the tree.

Stem lesions can survive for many years and are capable of producing bacterial inoculum eight to ten years later. Although symptoms of citrus canker may be seen seven to fourteen days after infection, the maximum visualization does not occur until approximately 107 to 108 days after infection. This makes it difficult to control a disease which easily spreads through wind-driven rain or contamination of equipment or plant material.

* * * * *

At the time that citrus canker, Asian strain, was discovered in Miami, the citrus canker eradication program in place called for the destruction of trees that were infected or were within a 125 foot radius of an infected tree. The 125 foot radius was adopted in the 1980s as a result of a study conducted in Argentina. However, that study did not take into account what would happen in an urban setting.

In Miami-Dade County, the destruction of citrus trees within a 125 foot radius of an infected tree was not reducing the occurrences of citrus

canker. Therefore, the Department decided to initiate a study that would measure the distances that citrus canker, Asian strain, would spread in South Florida. The study kept track of over 19,000 trees in four sites and determined the distance between the diseased trees and the newly infected trees. The study showed that the eradication program which used the 125 foot radius was inadequate because it only captured about thirty to forty-one percent of infection that spread from a diseased tree.

The results of the study were presented at a meeting in Orlando attended by approximately twenty individuals and scientists. Those at the meeting examined the findings. After considering a range of distances between diseased trees and newly infected trees at the various sites, those present determined that in order to destroy ninety-five percent of newly infected trees, it was necessary to destroy trees within a 1900 foot radius of a diseased tree, thereby creating a buffer zone which would prevent citrus canker from spreading any further.

In March 1999, the Citrus Canker Technical Advisory Task Force, a body of regulatory individuals, scientists and citrus industry representatives who deal with the issue of citrus canker, unanimously recommended that the Department adopt a policy to destroy trees within a 1900 foot radius of a diseased tree in order to eradicate citrus canker.

Florida courts have wrestled with striking the right balance between fighting a virulent pathogen that threatens the State's citrus industry and affording citizens the highest possible measure of due process and access to judicial review.

The case at hand stems from Vaughan's assertion that the Department employees had no right to enter his yard and inspect his citrus trees without a search warrant. Whether the entry and tree inspection was constitutional is not at issue. The sole issue is whether the Department employees are shielded from individual liability by qualified immunity. At the time of the inspection, no Florida court had required a warrant for such inspections or declared such inspections unconstitutional. In 2003, however, years after the inspection at issue in this case, Florida's Fourth District Court of Appeal analyzed the warrant requirement and concluded that certain parts of a yard may be deemed curtilage and that the Department must procure a warrant to inspect trees for citrus canker. *Dep't of Agriculture v. Haire*, 836 So. 2d 1040, 1054-5 (Fla. 4th DCA 2003). Notably, the same Florida district court which ultimately held that Department employees were required to obtain a warrant in order to inspect dooryard citrus trees also affirmed dismissal of Vaughan's claim against the Department employees for violating his Fourth Amendment right to be free from unreasonable searches and seizures.

ARGUMENT

I. THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY AFFIRMED DISMISSAL OF VAUGHAN'S COMPLAINT BECAUSE THE LAW REQUIRING THE DEPARTMENT TO OBTAIN WARRANTS TO INSPECT DOORYARD CITRUS TREES WAS NOT ESTABLISHED AT THE TIME OF THE ALLEGED FOURTH AMENDMENT VIOLATION.

Qualified immunity affords broad protection to "all but the plainly incompetent or those who knowingly violate the law." *See Malley v. Briggs*, 475 U.S. 335, 341 (1986); *Hutton v. Strickland*, 919 F.2d 1531, 1537 (11th Cir. 1990); *Tillman v. Coley*, 886 F.2d 317 (11th Cir. 1989). Qualified immunity is evaluated by an objective standard. *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1999). A government official proves that he acted within discretionary authority by showing objective circumstances which would compel the conclusion that the actions were undertaken pursuant to performance of duties and within the scope of his authority. *Id.* (citing *Zeigler v. Jackson*, 716 F.2d 847, 849 (11th Cir. 1983)).

To defeat qualified immunity, Vaughan had to "prove the existence of a clear, factually defined, well recognized right of which a reasonable [government official] should have knowledge" and that a reasonable official would have understood that his actions would have violated that right. *See Barts v. Joyner*, 865 F.2d 1187 (11th Cir. 1989).

When the Department employees entered Vaughan's yard for the limited purpose of inspecting leaves on citrus trees, they were entitled to rely on the statute authorizing such

inspections and the exigent circumstances surrounding the citrus canker emergency in Florida.

The Department employees had statutory authority to inspect Vaughan's property for citrus canker. Section 581.031(15)(a), Florida Statutes (2000), provided:

> The department has the following duties and powers: . . . to inspect plants, plant products, or other things or substances that may be capable of disseminating or carrying plant pests, noxious weeds. or arthropods, and for this purpose shall have power to enter into or upon any place. . . .

"Places" were defined to include "vessels, railroad cars, automobiles, aircraft, and other vehicles; buildings; docks; nurseries; orchards; and other premises where plants or plant products are grown, kept, or handled." Section 581.011(23), Florida Statutes (2000).

Qualified immunity operates to "ensure that before they are subject to suit, officers are on notice their conduct is unlawful." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). Following *Hope*, this Court narrowed qualified immunity to some degree, but did not undermine the protection from suit the doctrine provides. Under *Hope*, evaluating qualified immunity requires a Court to first determine whether a constitutional violation exists. If so, then the Court considers whether the contours of that right are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* at 739. Under this analysis, an official must have "fair warning" that his or her conduct deprived the victim of a constitutional right. *Id.* at 739 (citing *United States v. Lanier*, 520 U.S. 259 (1997)). *Hope* narrowed the

scope of qualified immunity slightly by holding that prior case authority need not be materially similar in order to serve as fair warning that certain conduct violates a person's constitutional rights. *Hope*, 536 U.S. at 739. Critically, in *Hope*, the conduct involved basic human rights and dignity when prison guards tortured an inmate.[2]

But in the case at hand, unlike the conduct in *Hope*, the inspection of citrus trees in someone's yard constituted at worst a minimal intrusion that, to the Department employees, could not be perceived as a Fourth Amendment violation.

A. Respondents could reasonably believe that they were authorized to conduct a warrantless search because the Legislature, the Commissioner of Agriculture, and Florida courts had declared citrus canker to be a statewide emergency.

Vaughan relies primarily on *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967), along with Fourth District Judge Gary Farmer's dissent, asserting that *Camara* put the Department employees on fair notice that their actions were unlawful. But *Camara*

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2. In *Hope*, prison guards chained a prisoner to a hitching post for seven hours, depriving him of water and food and taunting him as he suffered. The Court concluded that such treatment, which transpired after alleged misconduct by the inmate, served no true penal purpose and violated the prisoner's Eighth Amendment right to be free from cruel and unusual punishment. *Id.* at 738. Reversing the Eleventh Circuit's analysis and holding as too rigid, this Court determined that basic principles of fundamental human dignity need not be articulated by prior judicial authorities to provide fair warning to law enforcement officials that the subject conduct violated the Eighth Amendment. *Id.* at 738.

does not support a holding that the law was clearly established that warrantless searches under the CCEP were unconstitutional at the time of the inspection.

When the Department employees entered Vaughan's property, no Florida court had declared the applicable statutes or rules unconstitutional on Fourth Amendment grounds. Two circuit court judges did subsequently rule that warrantless searches were unconstitutional. One decision was vacated on appeal, and the other withstood scrutiny. *See Dep't of Agriculture v. Miami-Dade County*, 790 So. 2d 555 (Fla. 3d DCA 2001) (vacating trial court decision); *Dep't of Agriculture v. Haire*, 836 So. 2d 1040 (4th DCA 2003), *aff'd*, 870 So. 2d 774 (Fla. 2004). In *Miami-Dade County*, Judge Gerald Cope, concurring, opined that the Third District should address the warrant issue and intimated that a warrant is not required under the circumstances presented. As he wrote, "The County and the City appear to take the position that the entirety of a homeowner's yard qualifies as cartilage and that the Department cannot enter into any part of the yard without a search warrant. **That position is incorrect**." *Id.* at 559 (emphasis added). If an appellate judge on Florida's Third District Court of Appeal, in hindsight and with considerable deliberation, believed that a warrant was not required in every case when the Department inspected citrus trees on a person's yard, then it was reasonable for the Department employees in the field to believe that they were not violating Vaughan's Fourth Amendment rights when they conducted their inspection the prior year.

Furthermore, Vaughan's reliance upon *Camara* is misplaced because that landmark decision is factually distinct and contained exceptions to the warrant requirement, such that Respondents had good cause to believe that the Fourth Amendment did not prohibit their conduct.

Camara did not involve an emergency situation as is always present with a rapidly-spreading virulent disease. In *Camara*, an ordinance permitted city officials to enter "any building, structure, or premises" to "perform any duty imposed on them." 387 U.S. at 526. The intrusion in *Camara* was far more invasive because the statute allowed the entrance into a dwelling without any probable cause for inspection. *Id.* Here, the Department employees, in the midst of a plant disease emergency that provided probable cause, inspected only dooryard citrus, without entering any dwelling place.

Moreover, there are two exceptions to *Camara* where courts have dispensed with warrants for some searches. First, *Camara* recognized that exigent circumstances would obviate the need for a warrant: "Since our holding emphasizes the controlling standard of reasonableness, nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law was traditionally upheld in emergency situations." The seizure of unwholesome food products or to prevent the spread of disease constitutes an exigent circumstance for which a warrantless search or seizure is appropriate. 387 U.S. at 539. This Court cited cases where the emergency involved unwholesome food and human disease. *See North Am. Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908) (seizure of unwholesome food); *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11 (1905) (compulsory smallpox vaccination). Even more compelling, this Court cited to a case involving a contagious animal disease: in *Kroplin v. Truax*, 165 N.E. 498 (Ohio 1929), the Court recognized the need for immediate destruction of tubercular cattle. So, too, Florida law required the immediate destruction of a contagious plant pest that. *See* § 581.111, Fla. Stat. (2000) (defining "emergency" as "any situation in which the department has declared a plant pest or

noxious weed to be a public nuisance or when in the opinion of the department a plant pest or noxious weed endangers or threatens the horticultural and agricultural interest of the state").

The Florida Legislature, the Commissioner of Agriculture, and Florida courts characterized citrus canker as an emergency that required immediate action. In *Denny v. Conner*, 462 So. 2d 534, 536-37 (Fla. 1st DCA 1985), the First District Court of Appeal recognized that "the threat to the public interest in the citrus industry represented by citrus canker **is of sufficient gravity and urgency** that the effect of the immediate final order of the department should not be further stayed by this court" (emphasis added). *See Nordmann v. Florida Dep't of Agriculture*, 473 So. 2d 278, 279 (Fla. 5th DCA 1985) (approving the Department's emergency measures, and rejecting the owner's contention that the Department has "failed to show imminent danger justifying use of the state police power to destroy the trees"); *Sapp Farms, Inc. v. Dep't of Agriculture*, 761 So. 2d 347, 348-49 (Fla. 3d DCA 2000) (relying on *Denny* and upholding the Department's ability to remove trees exposed to citrus canker); *Dep't of Agriculture v. Sun Gardens, LLP*, 780 So. 2d 922, 924 (Fla. 2d DCA 2001) (recognizing the Department's finding of "possibly devastating effect of citrus canker on the citrus industry"); *Dep't of Agriculture v. Pompano Beach*, 792 So. 2d 539, 542 (Fla. 4th DCA 2001); *Haire*, 836 So. 2d 1047-50 (recognizing Legislature's ability to protect citrus industry in agricultural emergency).

On June 15, 2000, in adopting amendments to the plant disease laws of Florida, the Florida legislature recognized the increasingly-acute nature of this emergency. The legislature made several findings:

- an **emergency exists** in the South Florida area regarding the spread of citrus canker, a bacterial disease that damages fruit, weakens and eventually kills trees, is highly contagious, and the presence of which causes quarantines to be imposed on the shipment of fresh fruit;

- joint state and federal attempts to eradicate citrus canker have so far been unsuccessful;

- despite destruction of citrus trees infected with citrus canker and of citrus trees within 125 feet of canker-infected trees, citrus canker has spread at an alarming rate and is now present throughout Miami-Dade County and Broward County;

- if not eradicated quickly, citrus canker will spread to other parts of the state and **may destroy the citrus industry and dooryard citrus throughout Florida**;

- recent scientific studies have shown that citrus trees as far as 1,900 feet from infected citrus trees will develop the disease from wind-blown rain or by other means.

See Ch. 00-308, Laws of Fla. (emphasis added). No court had challenged the Legislature's findings at the time the Department employees inspected Vaughan's trees. Accordingly, when the Department employees entered Vaughan's yard for the limited purpose of inspecting the trees at issue, they had a reasonable basis to believe that citrus canker posed an exigent circumstance that obviated the need for a warrant even if one was otherwise required.

Vaughan, relying upon Judge Farmer's dissent, suggests that no emergency existed because the situation "lacked any compulsion of fresh pursuit, loss of criminal evidence caused by delay, or any other recognized urgent circumstance. Unless citrus canker disappears in the time it takes to obtain a warrant, there is no conceivable reason not to require one." (Petition at 16). This argument is wrong because it assumes exigent circumstances capture only police searches for evidence of a crime.

Citrus canker was an emergency because it is a virulent plant disease that could spread any time rain fell and the wind blew, which is frequently in South Florida. The concern is therefore not whether citrus canker will "disappear" during the time it takes to procure a warrant, but whether the disease will spread and infect more citrus. To conclude that the Department employees should have treated the citrus canker situation as anything other than a serious emergency would have required them to disregard the Florida Legislature, the Commissioner of Agriculture, and multiple Florida courts which specifically categorized citrus canker as an emergency requiring immediate action.

B. The Department employees' conduct was objectively reasonable in light exception to the warrant requirement for traditionally regulated sectors of the economy.

Second, the status of citrus as a traditionally regulated sector in the economy of Florida made warrantless searches seemingly plausible. This Court had recognized that a search warrant is not generally required in state sectors that have been pervasively regulated and subject to close supervision and inspection. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307

(1978); *Blue v. Koren*, 72 F.3d 1075, 1080 (2d Cir. 1995) (extensive warrantless surveys and inspections valid regardless of motive because of strong governmental interest and pervasively regulated nursing industry); *United States v. Argent Chem. Lab, Inc.*, 93 F.3d 572, 574 (9th Cir. 1996) (warrantless search and seizure of veterinary drugs valid because of strong state interest in controlling misuse).

Agriculture, plant pests, and citrus have been pervasively regulated in Florida. *See generally* Chs. 570-604, Fla. Stat. (2000), Chs. 570 and 581; Chs. 5A-5L, Fla. Admin. Code, and especially Ch. 5B. The Florida legislature had authorized the Department to control and eradicate plant diseases. *See* § 581.031(7), (15), (17), Fla. Stat. (2000). Indeed, Florida had fought against citrus canker and other agricultural pests for many years, and agriculture, particularly disease-susceptible plants, have been regulated in Florida for over 100 years. *See* Fla. Const. of 1885, art. IV, § 20 (creating post of Commissioner of Agriculture); Ch. 581, Fla. Stat. (historical note documents creation of State Plant Board in 1927 to control agricultural pests); *Richardson v. Baldwin*, 124 Fla. 233, 168 So. 255 (Fla. 1936) (reciting duties of State Plant Board). The destruction of trees infected or exposed to citrus canker, under the power conferred in the Florida Statutes, was recognized by the Florida Supreme Court after the initial 1985 outbreak of canker in this state. *Dep't of Agriculture v. Polk*, 568 So. 2d 35, 37-40 (Fla. 1990).

In order for warrantless administrative search to be reasonable, there must be a substantial state interest behind the regulatory scheme; the search is necessary to further that scheme; and the authorizing statue is an adequate substitute for the warrant requirement in giving notice to owners and limiting discretion of those conducting the search. It was not

clearly established that warrantless citrus canker inspections did not fit within this framework at the time the Department employees inspected Vaughan's trees.[3]

II. THIS COURT REJECTED CERTIORARI JURISDICTION OVER A CASE ARISING OUT OF SIMILAR CIRCUMSTANCES AND UPON WHICH THE FOURTH DISTRICT BASED ITS DECISION.

In the Fourth District's Opinion, the majority of the panel relied upon *Grimm v. Spell*, Case No. 2:00-CV-506-FTM-29DNF (M.D. Fla. July 3, 2003) (Petitioner's A-4). Just as in this case, the Department employees in *Grimm* entered

3. *See New York v. Burger*, 482 U.S. 691, 702-704 (1987) (warrantless search of automobile junkyard valid because conducted pursuant to statute, necessary to further state interest in detecting stolen cars, and discretion of officer conducting the search limited); *Showers v. Spangler*, 182 F.3d 165, 172 (3d Cir. 1999) (warrantless administrative search of taxidermist's business would be valid if taxidermy were pervasively regulated business); *United States v. Cobb*, 975 F.2d 152, 156 (5th Cir. 1992) (warrantless administrative search of trucking company justified because part of company's business included pervasively regulated motor vehicle salvage operation); *United States v. Branson*, 21 F.3d 113, 116 (6th Cir. 1994) (warrantless administrative search of auto repair shop valid because of business' statutory regulation); *LeRoy v. Illinois Racing Bd.*, 39 F.3d 711, 713-14 (7th Cir. 1994) (warrantless administrative search of racehorse owner's automobile at race track valid because horse racing pervasively regulated industry); *Schwartz v. Pridy*, 94 F.3d 453, 457 (8th Cir. 1996) (warrantless administrative search justified because auto parts industry was pervasively regulated); *Winters v. Board of County Comm'rs*, 4 F.3d 848, 853 (10th Cir. 1993) (warrantless administrative search of pawn shop valid because pawnshops are pervasively regulated); *Moore v. State*, 442 So. 2d 215, 216 (Fla. 1983) (warrantless administrative searches of automotive repair shops constitutional).

the plaintiff's yard to inspect citrus trees before any Florida court imposed a warrant requirement. In *Grimm*, the federal district court ruled that qualified immunity shielded Department employees, who entered a homeowner's yard to inspect citrus trees, from personal liability. The Eleventh Circuit Court of Appeal affirmed the decision, and this Court denied certiorari jurisdiction. (*Grimm v. Spell*, Case No. 04-168, *cert. denied*, 543 U.S. 999 (2004)). Grimm is indistinguishable from this case.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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